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| MEMORANDUM **TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** |

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| TO: | Department of Family and Protective Services Logo**Chair and Members Department of Family and Protective Services Council** |
| FROM: | **John J. Specia, Jr.  Commissioner** |
| SUBJECT: | **Agenda Item 5c : Informational Item on rule changes in 1 TAC, Subchapter H, Reimbursement Methodology For 24-Hour Child Care Facilities, §355.7103 Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements** |
| DATE: | **June 14, 2013** |

## BACKGROUND AND PURPOSE

This proposal incorporates changes regarding uniform cost report excusal procedures in §355.7103 that were proposed in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2591) and subsequently were withdrawn.

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend §355.7103 to reference the uniform cost report excusal rules and to outline how the 24-Hour Residential Child-Care (24 RCC) rates effective September 1, 2013, will be determined.

*Cost Report Excusals:*

Normally, all providers are expected to submit a cost report. However, there are circumstances when a provider automatically may be excused from submission of a cost report. Section 355.7103(f)(4) specifies the cost report excusal requirements for the 24 RCC program. In 2012, uniform cost report excusal requirements for all programs, including 24 RCC, were incorporated into §355.105, General Reporting and Documentation Requirements, Methods, and Procedures. The cost report excusal requirements for 24 RCC in §355.7103 are now obsolete and are proposed for removal.

Circumstances in §355.105 under which HHSC may excuse 24 RCC providers from the requirement to submit a cost report include the following:

- if there were no billable services provided during the provider’s cost-reporting period;

- if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month;

- if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency;

- if all of the provider’s contract(s) required to be included on the cost report have been terminated prior to the cost-report due date;

- if the provider’s contract was not renewed;

- if only Basic Level services were provided;

- if the total number of state-placed days (Department of Family and Protective Services (DFPS) days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;

- if the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost–reporting period;

- for facilities that provide Emergency Care Services only, if the occupancy rate was less than 30 percent during the cost-reporting period;

- for all other facility types except Child-Placing Agencies and those providing Emergency Care Services, if the occupancy rate was less than 50 percent during the cost-reporting period.

*Payment Rates to be Effective September 1, 2013*

The proposed amendment will adjust payment rates for the 24 RCC program to comply with the 2014-15 General Appropriations Act (Article II, Health and Human Services, 83rd Legislature, Regular Session, 2013), which appropriated general revenue funds for provider rate increases for this program.

## DETAILED SECTION ANALYSIS AND DISPOSITION TABLE

| **Current Rule Sections** | **Proposed Action; New Rule Section** | **Summary Explanation of Proposed Action** |
| --- | --- | --- |
| 1 TAC, §355.7103 | Amend subsection (f)(4) | The amendment deletes the language specifying the requirements for excusal from the submission of a cost report and replaces it with a reference to 1 TAC §355.105. The deleted language is being added to §355.105. |
| 1 TAC, §355.7103 | Amend subsection (q) | The amendment revises the percentages by which current rates will be increased for the new biennium. |

## STATUTORY AUTHORITY AND STATUTES AFFECTED

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission’s duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule; and Texas Family Code Section 264.101(d), which authorizes the Executive Commissioner of HHSC to adopt rules establishing criteria and guidelines for the payment of foster care.

The amendments implement Government Code, §§ 531.033 and 531.055; and Texas Family Code § 264.101.

## FISCAL IMPLICATIONS

Fiscal Impact. Fiscal Impact. For each of the first five years that the rules will be in effect there will be a fiscal impact to state government of of $14,981,073 for state fiscal year (SFY) 2014, $15,518,592 for SFY 2015, $15,518,592 for SFY 2016, $15,518,592 for SFY 2017, $15,518,592 for SFY 2018, and $15,518,592 for 2019. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Public Costs and Benefits. For each of the first five years that the rules are in effect, the public benefit is that the amendment will make the rules regarding excusal from cost report submission as consistent as possible, and will consolidate them in a single location. This will enable the public to readily find and have a better understanding of the requirements for excusal. In addition, the expected public benefit from the revision to subsection (q) is that providers of 24 RCC services will be paid the proper reimbursement rates in compliance with legislative appropriations.

Impact on Business. There is no anticipated adverse impact on small, micro, and large businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

Local Employment Impact and Takings Statements. No local employment impact statement was required for this rule. The agency is not required to complete a takings impact assessment regarding the proposed section(s).

Technology Impact. There is no anticipated impact on technology as a result of the proposed rule change.

## STAKEHOLDER INPUT

Interested parties were sent the proposed rules.

## RECOMMENDATION

The proposed amendment must be submitted to the *Texas Register* for publication as proposed prior to the DFPS Council meeting in order to meet a September 1, 2013, effective date. Recommendations from the DFPS Council will be considered prior to publishing the rule as adopted.

## ATTACHMENTS

Attached is a copy of the proposed change to the rule section as staff recommended for submittal to the *Texas Register*.